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HRACH BABAIAN

**UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

HRACH BABAIAN, as an individual, ) Case No.:  
on behalf of himself, all others )  
similarly situated, and the general ) **CLASS ACTION COMPLAINT**  
public, )

Plaintiff,

vs.

DUNKIN' BRANDS GROUP, INC., a )  
Delaware Corporation; and DOES 1 )  
through 100, inclusive, )

Defendants. )

- ) 1. Breach of Express Warranty
- ) 2. Breach of Implied Warranty
- ) 3. Breach of Contract
- ) 4. Common Law Fraud
- ) 5. Intentional Misrepresentation
- ) 6. Negligent Misrepresentation
- ) 7. Violation of the California Consumer  
Legal Remedies Act ("CLRA"), Civil  
Code § 1750 *et seq.*;
- ) 8. Violation of the California Unfair  
Competition Act ("UCL"), Business and  
Professions Code § 17200, *et seq.*
- ) 9. Violation of the California False  
Advertisement Law ("FAL"), Business  
and Professions Code § 17500, *et seq.*
- ) 10. Quasi Contract/Restitution/Unjust  
Enrichment

**JURY TRIAL DEMANDED**

## COMPLAINT

NOW COMES Plaintiff, HRACH BABAIAN, as an individual, on behalf of himself, all others similarly situated, and the general public, by and through Plaintiff's attorneys, with the Class Action Complaint against Defendants, DUNKIN' BRANDS GROUP, INC. (hereinafter "Dunkin Donuts" or "Defendant"), a Delaware Corporation, and DOES 1 through 100, inclusive, alleges and affirmatively states as follows:

## INTRODUCTION

1. Plaintiff brings this action on behalf of himself, and all other similarly situated persons residing in California and/or the United States who purchased products sold by Defendants, DUNKIN' BRANDS GROUP, INC., a Delaware Corporation ("Dunkin Donuts") and DOES 1 through 100.

2. Dunkin Donuts sells certain products with descriptive names containing the word "blueberry," such as "Blueberry Butternut Donut," "Blueberry Cake Donut," "Blueberry Crumb Cake Donut," and "Glazed Blueberry Munchkin" (collectively, "Blueberry Donuts") and others containing the word "maple," such as "Frosted Maple Crème Donut," "Glazed Apple Maple Donut," "Maple Apple Croissant Donut," "Maple Crème Donut," "Maple Crème Drizzle Donut," "Maple Crumb Cake Donut," "Maple Frosted Coffee Roll," "Maple Frosted Donut," "Maple Frosted Sprinkles Donut," and "Maple Vanilla Crème Donut" (collectively, "Maple Donuts" and collectively with Blueberry Donuts, "Class Products") which represent to consumers that these donuts contain blueberries and maple syrup or maple sugar, respectively ("Real Ingredients"). However, the reality is that these donuts do *not* contain these ingredients.

3. Defendants Dunkin Donuts and DOES 1 through 100 collectively, designed, manufactured, distributed, marketed, and sold Class Products with such deceptive names.

4. Although Dunkin Donuts knew from the very start of the distribution and sale of Class Products that the Blueberry Donuts and Maple Donuts did not contain the

1 ingredients that were part of the descriptive names of the products, it distributed the  
2 donuts with such descriptive names in the United States in order to make them more  
3 attractive to consumers.

4 5. In reasonable reliance on the representations made in the descriptive names of  
5 the Blueberry Donuts and the Maple Donuts, Plaintiff and other consumers purchased  
6 them, believing they contained the ingredients featured in the name of the product. Had  
7 Plaintiff and other consumers known that the donuts did not contain these ingredients,  
8 they would not have purchased the subject donuts or would have paid significantly less  
9 for them.

## 10 11 **PARTIES**

12 6. Plaintiff, HRACH BABAIAN (hereinafter “Babaian” or “Plaintiff”), is and was  
13 at all times relevant herein an individual residing in Los Angeles County, California.  
14 Plaintiff Babaian purchased and consumed two donuts, namely, the “Blueberry Cake  
15 Donut” and the “Maple Frosted Donut,” which were manufactured, sold or otherwise  
16 delivered to Plaintiff Babaian without the Real Ingredients and as described herein.

17 7. Plaintiff appears in this action on behalf of himself, on behalf of all others  
18 similarly situated, and pursuant to Business and Professions Code §§ 17200 *et seq.* and  
19 17500 *et seq.*, on behalf of the general public in his capacity as a private attorney  
20 general.

21 8. Defendant, DUNKIN BRANDS GROUP, INC. (“Dunkin Donuts”) is a  
22 Delaware Corporation, which is licensed to do business, and is doing business  
23 throughout the United States, with its principal place of business located at 130 Royall  
24 Street, Canton, MA 02021. Dunkin Donuts transacts business in Los Angeles County,  
25 California, and at all relevant times developed, promoted, marketed, distributed, and/or  
26 sold the Class Products, throughout the United States, including California. Defendant  
27 Dunkin Donuts has significant contacts with the State of California by transacting  
28 business in this state.

1           9. Plaintiff is informed and believes, and based thereon alleges that Defendants  
2 DOES 1 through 100 are corporations, or are other business entities or organizations of a  
3 nature unknown to Plaintiff.

4           10. Plaintiff is unaware of the true names of Defendants DOES 1 through 100.  
5 Plaintiff sues said defendants by said fictitious names, and will amend this Complaint  
6 when the true names and capacities are ascertained or when such facts pertaining to  
7 liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and  
8 believes that each of the fictitiously named defendants is in some manner responsible for  
9 the events and allegations set forth in this Complaint.

10           11. Plaintiff is informed, believes, and based thereon alleges that at all relevant  
11 times, each Defendant was a developer, producer, distributor and seller of Class  
12 Products, was the principal, agent, partner, joint venturer, officer, director, controlling  
13 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or  
14 predecessor in interest of some or all of the other Defendants, and was engaged with  
15 some or all of the other defendants in a joint enterprise for profit, and bore such other  
16 relationships to some or all of the other Defendants so as to be liable for their conduct  
17 with respect to the matters alleged in this complaint. Plaintiff is further informed and  
18 believes, and based thereon alleges that each Defendant acted pursuant to and within the  
19 scope of the relationships alleged above, and that at all relevant times, each Defendant  
20 knew or should have known about said deceptively named Donuts, authorized, ratified,  
21 adopted, approved, controlled, aided and abetted the conduct of all other Defendants. As  
22 used in this Complaint, “Defendants” means “Defendants and each of them,” and refers  
23 to the Defendants named in the particular cause of action in which the word appears and  
24 includes Dunkin Donuts and DOES 1 through 100.

25           12. At all times mentioned herein, each Defendant was the co-conspirator, agent,  
26 servant, employee, and/or joint venturer of each of the other Defendants and was acting  
27 within the course and scope of said conspiracy, agency, employment, and/or joint  
28 venture and with the permission and consent of each of the other Defendants.



1        23. While in the Dunkin Donuts store, Plaintiff Babaian read the signs next to the  
2 product displays in the store, including those for Blueberry Donuts, which stated  
3 “Blueberry Cake Donut,” and those for Maple Donuts, which stated “Maple Frosted  
4 Donut” and relied on Defendants’ representation that the Class Products were blueberry  
5 donuts and maple donuts, respectively. There were no signs or asterisks present next to  
6 the Blueberry Donuts and/or the Maple Donuts that disclosed the lack of Real  
7 Ingredients in Class Products.

8        24. Had there been an adequate disclosure that Class Products did not contain Real  
9 Ingredients, Plaintiff Babaian would have learned that the Blueberry Donuts and Maple  
10 Donuts lacked Real Ingredients.

11        25. Subsequent to his purchase, Babaian learned about the lack of Real Ingredients  
12 in Blueberry Donuts and Maple Donuts, and on May 16, 2017 sent a “Notice of  
13 Violation of the California Consumer Legal Remedies Act” to Dunkin Donuts.

14        26. Had Plaintiff Babaian known that Class Products did not contain Real  
15 Ingredients, he would not have purchased the Class Products, and would have purchased  
16 other products that contained blueberries and maple from the competitors of Dunkin  
17 Donuts’ or would have paid significantly less for them. Therefore, Plaintiff Babaian  
18 suffered injury in fact and lost money as a result of purchasing these donuts.

19  
20        **ALLEGATIONS COMMON TO PLAINTIFF AND CLASS MEMBERS**

21        27. Dunkin Donuts develops, distributes, markets, advertises and sells Dunkin  
22 Donuts branded Class Products in the United States.

23        28. Dunkin Donuts has a system of Dunkin Donuts stores throughout the United  
24 States through which it markets, advertises and sells Dunkin Donuts branded goods. Said  
25 authorized stores are tightly controlled by Dunkin Donuts and are the agents of Dunkin  
26 Donuts. Dunkin Donuts controls the production and marketing practices of Dunkin  
27 Donuts authorized stores, the menu within those stores, the names of products to be  
28 displayed at the stores, the ingredients in those products, and even the appearance of said

1 stores. Additionally, Dunkin Donuts trains the Dunkin Donuts authorized store owners.

2 29. Through years Dunkin Donuts developed, distributed, marketed, advertised and  
3 sold certain varieties of donuts, described below, with names that contain the words  
4 “blueberry” or “maple,” but do not in fact contain blueberries or maple syrup/maple  
5 sugar, respectively.

6 30. The Blueberry Donuts and the Maple Donuts are and, based on Plaintiff’s  
7 information and belief, always have been deceptively named, in that they never included  
8 blueberries or maple syrup/maple sugar, respectively (“Real Ingredients”).

9 31. The varieties of donuts at issue include at least the following Blueberry Donuts  
10 and Maple Donuts: “Blueberry Butternut Donut,” “Blueberry Cake Donut,” “Blueberry  
11 Crumb Cake Donut,” “Glazed Blueberry Munchkin,” “Frosted Maple Crème Donut,”  
12 “Glazed Apple Maple Donut,” “Maple Apple Croissant Donut,” “Maple Crème Donut,”  
13 “Maple Crème Drizzle Donut,” “Maple Crumb Cake Donut,” “Maple Frosted Coffee  
14 Roll,” “Maple Frosted Donut,” “Maple Frosted Sprinkles Donut,” and “Maple Vanilla  
15 Crème Donut”.

16 32. Defendant Dunkin Donuts, as the producer, distributor, and seller of Class  
17 Products, had exclusive knowledge about the lack of Real Ingredients in the Blueberry  
18 Donuts and Maple Donuts prior to start of distribution and sale of each of the identified  
19 Blueberry Donuts and Maple Donuts because Dunkin Donuts formulated and  
20 manufactured the Blueberry Donuts and Maple Donuts.

21 33. Defendant Dunkin Donuts, thus, knew that the Blueberry Donuts and Maple  
22 Donuts did not contain Real Ingredients before Plaintiff and putative class members  
23 purchased the Class Products.

24 34. Knowing the truth and motivated by profit and market share, Defendants have  
25 knowingly and willfully engaged in the acts and/or omissions to mislead and/or deceive  
26 Plaintiff and others similarly situated.

27 35. Even though Dunkin Donuts knew that the Blueberry Donuts and Maple  
28 Donuts did not contain Real Ingredients, it distributed and marketed the Blueberry



Donuts and Maple Donuts without disclosing the lack of Real Ingredients in Class Products to Plaintiff and the Class Members.



Figure 1. The Blueberry Cake Donut is advertised as one of popular varieties.

36. Even worse, Dunkin Donuts intentionally used the words “blueberry” and “maple” in the naming of the Class Products and marketed the Class Products as blueberry donuts and maple donuts with an intent to deceive consumers into believing that the Class Products contained Real Ingredients.

37. At all times relevant herein, Dunkin Donuts continually used names containing the words “blueberry” and “maple” in the names of the Blueberry Donuts and Maple Donuts on the signs in product displays, in menus, on in-store banners, screens, advertisements, and elsewhere.





Figure 2. Typical product display at a Dunkin' Donuts store.

38. Further, Dunkin Donuts actively concealed the fact that Class Products lacked Real Ingredients by using artificial flavors to mimic the flavor of Real Ingredients in Class Products and to further deceive Plaintiff and the putative class members.

39. Dunkin Donuts had a duty to disclose the lack of Real Ingredients in Blueberry Donuts and Maple Donuts, because it had exclusive knowledge about the lack of Real Ingredients in Blueberry Donuts and Maple Donuts from sources not reasonably discoverable by Plaintiff and the putative class members; because Dunkin Donuts actively concealed the fact that Blueberry Donuts and Maple Donuts lacked Real Ingredients; and because Dunkin Donuts affirmatively misrepresented to Plaintiff and putative class members that Blueberry Donuts and Maple Donuts contained Real Ingredients by intentionally using the words “blueberry” and “maple” in the naming of Blueberry Donuts and Maple Donuts, and made some disclosures about the ingredients of the Blueberry Donuts and Maple Donuts, but failed to make an adequate disclosure

1 that the Blueberry Donuts and Maple Donuts did not contain Real Ingredients. Dunkin  
2 Donuts does not disclose the ingredients of its donuts anywhere in Dunkin Donuts  
3 stores. Disclosures of ingredients provided by Dunkin Donuts on its web site are  
4 inadequate.

5 40. Plaintiff and the putative class members reasonably relied on said  
6 misrepresentations and the fraudulent concealment of the fact that Blueberry Donuts and  
7 Maple Donuts did not contain Real Ingredients, because Dunkin Donuts used a number  
8 of substitute artificial ingredients to produce flavors similar to Real Ingredients in  
9 Blueberry Donuts and Maple Donuts to further deceive the Plaintiff and putative class  
10 members. Based on information and belief, the Real Ingredients are more expensive than  
11 the artificial ingredients that Dunkin Donuts used to deceive the consumers.

12 41. The fact that the Blueberry Donuts and Maple Donuts do not contain Real  
13 Ingredients is material because it is related to the contents of consumable goods and  
14 because reasonable consumers are likely to be influenced by the lack or presence of Real  
15 Ingredients in deciding whether to purchase these products.

16 42. Blueberries contain antioxidants called anthocyanins, which have been shown  
17 to inhibit free radicals from damaging cells in the body.<sup>1</sup> Studies suggest that the  
18 antioxidant properties of anthocyanins may protect against cardiovascular diseases  
19 (including stroke) as well as neurodegenerative disorders of aging, such as Alzheimer's  
20 disease, and may play a role in cancer prevention.<sup>2</sup> In popular press, blueberries have  
21 reached prominent status in terms of their unique health benefits, and have been widely  
22 perceived as a "superfood" by the public.

23 43. Maple syrup and maple sugar are derived from the sap of the maple tree. More  
24

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25 <sup>1</sup> Nile SH, Park SW. Edible berries: bioactive components and their effect on human  
26 health. Nutrition. 2014 Feb; 30(2): 134-44.

27 <sup>2</sup> De Pascual, T. Molecular mechanisms involved in the cardiovascular and  
28 neuroprotective effects of anthocyanins. Arch Biochem Biophys. 2014 Oct 1; 559-68-  
74.

1 than 20 compounds in maple syrup have been linked to human health, including  
2 phenolics, the beneficial class of anti-oxidant compounds also found in berries.<sup>3</sup>

3 44. Plaintiff and the putative class members suffered economic damage because  
4 they were deprived of the benefit of their bargain since they would not have purchased  
5 the Blueberry Donuts and Maple Donuts had they known about the lack of Real  
6 Ingredients and would have purchased other donuts that contained Real Ingredients, or  
7 the similar products of Dunkin Donuts' local and national competitors instead, such as  
8 Starbucks or Blue Star Donuts in Los Angeles and Portland area, which contain Real  
9 Ingredients.

10 45. Plaintiff is informed and believes and thereon alleges that Defendants' practice  
11 in using the words "blueberry" and "maple" in Blueberry Donuts and Maple Donuts that  
12 lack Real Ingredients, and failure to adequately disclose that Blueberry Donuts and  
13 Maple Donuts lack Real Ingredients impacts the competition between Dunkin Donuts  
14 and other local or national stores and bakeries that produce similar products and either  
15 use the words "blueberry" and "maple" only in those products which include Real  
16 Ingredients, or refrain from using the words "blueberry" and "maple" in the naming of  
17 their donuts. This practice gives Dunkin Donuts a competitive advantage over other  
18 businesses operating in the same market. It is important to note that Dunkin Donuts  
19 combines the donut sales with coffee, and other derivative product sales. Consequently,  
20 Dunkin Donuts' unfair, unlawful, and fraudulent business acts and practices are  
21 extended to other product lines that are derivative of donut sales, and impact the  
22 competition in the markets of derivative products as well.

23 46. The Blueberry Donuts and Maple Donuts from Dunkin Donuts, thus, are not  
24 the same quality as those generally accepted in the trade of consumables, are of poor or  
25 below average quality within the description of "Blueberry Donuts" and "Maple

26  
27 <sup>3</sup> University of Rhode Island. "Pure maple syrup contains medicinally beneficial  
28 compounds, pharmacy researcher finds." ScienceDaily. ScienceDaily, 25 March 2010.  
<[www.sciencedaily.com/releases/2010/03/100321182924.htm](http://www.sciencedaily.com/releases/2010/03/100321182924.htm)>.

Donuts” and/or did not conform to the affirmations of fact made by Dunkin Donuts in its labeling of Class Products as blueberry donuts and maple donuts.

47. Plaintiff and the putative class members suffered economic harm because the Blueberry Donuts and Maple Donuts they purchased are unmerchantable and are worth less than what they paid/pay for them.

48. Plaintiff and the putative class members suffered economic harm because they bargained for and paid for blueberry donuts and maple donuts that were meant to include Real Ingredients, however they received the Class Products that only had artificial flavors as substitute for Real Ingredients.

49. Dunkin Donuts continues its unfair, fraudulent and unlawful practice as alleged herein. Plaintiff and the Class Members will never know whether a donut they are purchasing from Dunkin Donuts has Real Ingredients based on the name of the product.

### CLASS DEFINITIONS AND CLASS ALLEGATIONS

50. This action seeks financial compensation for members of the Class in connection with their purchase of the Blueberry Donuts and Maple Donuts. Plaintiffs do not seek: (i) damages for personal, bodily, or emotional injury or wrongful death; or (ii) damages for becoming subject to liability or legal proceedings by others.

51. This action has been brought and may properly be maintained as a class action pursuant to the provisions of Federal Rule of Civil Procedure 23 and other applicable law by Plaintiff on behalf of himself and a Class as defined as follows:

- (1) *National Class*: The Class that Plaintiff seeks to represent (“National Class”) is defined to include all persons and entities within the United States who purchased or will purchase a Blueberry Donut and/or a Maple Donut, on or after Defendant placed the Blueberry Donuts and Maple Donuts into the stream of commerce. Excluded from the National Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers,

1 directors, agents, servants, or employees of Defendants, and the immediate  
 2 family member of any such person. Also excluded is any trial judge who may  
 3 preside over this case.

4  
 5 (2) *California Subclass*: The Class that Plaintiff seeks to represent (“California  
 6 Subclass”) consists of all persons and entities who purchased or will purchase a  
 7 Blueberry Donut and/or a Maple Donut in California, on or after the date  
 8 Defendant placed the Blueberry Donuts and Maple Donuts into the stream of  
 9 commerce. Excluded from the Class are Defendants, any parent, subsidiary,  
 10 affiliate, or controlled person of Defendants, as well as the officers, directors,  
 11 agents, servants, or employees of Defendants, and the immediate family  
 12 member of any such person. Also excluded is any trial judge who may preside  
 13 over this case.

14 (3) *California Consumer Subclass*: The Class that Plaintiff seeks to represent  
 15 (“California Consumer Subclass”) consists of all members of California  
 16 Subclass that acquired a Blueberry Donut and/or a Maple Donut for personal,  
 17 family, or household purposes.

18  
 19 52. There is a well-defined community of interest in the litigation, and the proposed  
 20 class is ascertainable:

21 a. *Common Questions Predominate*: Common questions of law and fact  
 22 exist as to all class members, and predominate over any questions that effect only  
 23 individual members of the class, if there are any individual questions. The common  
 24 questions of law and fact include, but are not limited to:

- 25 1) Whether the Blueberry Donuts and Maple Donuts were of poor or inferior  
 26 quality within the description of “blueberry donuts” and “maple donuts” as  
 compared with other similar products;
- 27 2) Whether Defendants knew of the lack of Real Ingredients in Blueberry Donuts  
 28 and Maple Donuts;



- 3) Whether Defendants violated California consumer protection statutes;
- 4) Whether Defendants breached their implied warranties;
- 5) Whether the advertisements and statements made by Defendants were and are false and/or had and have had a tendency to deceive customers, by either failing to disclose the lack of Real Ingredients in Blueberry Donuts and Maple Donuts or misrepresenting that the Blueberry Donuts and Maple Donuts contained Real Ingredients;
- 6) Whether Defendants failed to adequately disclose the lack of Real Ingredients in Blueberry Donuts and Maple Donuts;
- 7) Whether the names of Blueberry Donuts and Maple Donuts were deceptive;
- 8) The nature and extent of Defendants' implied warranty of merchantability for Blueberry Donuts and Maple Donuts;
- 9) Whether the nondisclosure of lack of Real Ingredients is an unlawful, unfair and/or "fraudulent" business act or practice within the meaning of the Business and Professions Code §§ 17200 et seq.;
- 10) Whether Defendants had a duty to Plaintiff and the Class to disclose the lack of Real Ingredients in Blueberry Donuts and Maple Donuts;
- 11) Whether Defendants knew or reasonably should have known about the lack of Real Ingredients in Blueberry Donuts and Maple Donuts;

b. *Typicality*: Plaintiff's claims are typical of the claims of the class members. Plaintiff and the class members sustained the same types of damages and losses.

c. *Numerosity and Ascertainability*: The classes are so numerous, thousands, if not millions of persons, that individual joinder of all class members is impractical under the circumstances. The class members can be ascertained by, among other things, sales records and by responses to methods of class notice permitted by law.

d. *Adequacy*: Plaintiff is a member of the Class and will fairly and adequately protect the interests of the members of the class. The interests of the Plaintiff are coincident with, and not antagonistic to, those other members of the Class. Plaintiff is committed to the vigorous prosecution of this action and have retained counsel, who



1 are competent and experienced in handling complex and class action litigation on behalf  
2 of consumers.

3 e. *Superiority and Substantial Benefit:* The prosecution of separate actions  
4 by individual members of the Class would create a risk of: (1) Inconsistent or varying  
5 adjudications concerning individual members of the Class which would establish  
6 incompatible standards of conduct for the party opposing the Class; and (2) Adjudication  
7 with respect to the individual members of the Class would substantially impair or  
8 impede the ability of other members of the Class who are not parties to the adjudications  
9 to protect their interests. The class action method is appropriate for the fair and efficient  
10 prosecution of this action. Individual litigation of the claims brought herein by each  
11 Class Member would produce such a multiplicity of cases that the judicial system having  
12 jurisdiction of the claims would remain congested for years. Class treatment, by contract  
13 provides manageable judicial treatment calculated to bring a rapid conclusion to all  
14 litigation of all claims arising out of the aforesaid conduct of Defendants. The  
15 certification of the Class would allow litigation of claims that, in view of the expense of  
16 the litigation may be sufficient in amount to support separate actions.

## 18 **TOLLING OF STATUTE OF LIMITATIONS**

19 53. Any applicable statutes of limitation have been equitably tolled by Dunkin  
20 Donuts' affirmative acts of fraudulent concealment, suppression and denial of the true  
21 facts regarding the existence of the lack of Real Ingredients alleged herein. Such acts of  
22 fraudulent concealment include, but are not limited to intentionally covering up and  
23 refusing to publically disclose that Blueberry Donuts and Maple Donuts lack Real  
24 Ingredients. Through such acts of fraudulent concealment, Dunkin Donuts was able to  
25 actively conceal from the public for years the truth about the lack of Real Ingredients,  
26 thereby tolling the running of any applicable statute of limitations.

27 54. Defendants are estopped from relying on any statutes of limitation because of  
28 their misrepresentation and fraudulent concealment of the true facts, as described herein,

1 concerning the lack of Real Ingredients in Blueberry Donuts and Maple Donuts,  
2 Defendants were, at all times aware of the lack of those ingredients as described herein  
3 but at all times continued to sell and market the Blueberry Donuts and Maple Donuts  
4 using the words “blueberry” and “maple” in their names despite this knowledge.

5  
6 **FIRST CAUSE OF ACTION**  
7 **BREACH OF EXPRESS WARRANTY**  
8 *(California Subclass)*

9 55. Plaintiff re-alleges and incorporate by reference as fully set forth herein all  
10 paragraphs of Class Action Complaint.

11 56. Plaintiff brings this cause of action on behalf of himself and on behalf of  
12 California Class.

13 57. Dunkin Donuts used the words “blueberry” and “maple” in the naming of  
14 Blueberry Donuts and Maple Donuts.

15 58. Dunkin Donuts’ naming of Blueberry Donuts and Maple Donuts were false  
16 representations of fact, that were known by the Defendants to be untrue at the time they  
17 were made and were intended to create reliance.

18 59. Dunkin Donuts’ naming of Blueberry Donuts and Maple Donuts, thus created  
19 express warranties that the Blueberry Donuts and Maple Donuts would contain Real  
20 Ingredients.

21 60. Dunkin Donuts breached the express warranties by selling Blueberry Donuts  
22 and Maple Donuts, which lack Real Ingredients.

23 61. Dunkin Donuts’ breach caused injury to Plaintiff and Putative Class Members,  
24 because Plaintiff and Putative Class Members did not get the benefit of their bargain,  
25 which included, *inter alia*, actual blueberry donuts and maple donuts.

26 62. Defendants have and continue to breach their express warranties as alleged  
27 herein, because Blueberry Donuts and Maple Donuts lack Real Ingredients at the time of  
28 sale.

63. As a result of Defendants’ breach of express warranties as set forth above,

1 Plaintiff and others similarly situated have suffered and will continue to suffer damages  
2 in an amount to be determined at trial.

3  
4 **SECOND CAUSE OF ACTION**  
5 **BREACH OF IMPLIED WARRANTY**  
6 *(California Subclass)*

7 64. Plaintiff re-alleges and incorporate by reference as fully set forth herein all  
8 paragraphs of Class Action Complaint.

9 65. Plaintiff brings this cause of action on behalf of himself and on behalf of  
10 California Class.

11 66. The Blueberry Donuts and Maple Donuts are produced goods.

12 67. The transactions by which the putative class members purchased the  
13 Blueberry Donuts and Maple Donuts were transactions for the sale of goods and at all  
14 times relevant, Dunkin Donuts was the seller of Blueberry Donuts and Maple Donuts  
15 and placed these products into the stream of commerce throughout the United States,  
16 including California.

17 68. Plaintiff and putative class members purchased Blueberry Donuts and Maple  
18 Donuts from authorized Dunkin Donuts stores.

19 69. Blueberry Donuts and Maple Donuts came with an implied warranty that the  
20 Blueberry Donuts and Maple Donuts and any parts thereof were merchantable, were the  
21 same quality as those generally accepted in the trade, were not of poor or below average  
22 quality within the description and/or conformed to the affirmations of fact made by  
23 Dunkin Donuts.

24 70. The Blueberry Donuts and Maple Donuts, however, were non-conforming  
25 goods and/or goods that were not the same quality as those generally accepted in the  
26 trade, were of poor or below average quality within the description and/or did not  
27 conform to the affirmations of fact disseminated by Dunkin Donuts because they lack  
28 Real Ingredients.

71. The Blueberry Donuts and Maple Donuts, at all times relevant herein were not

1 the same quality as those generally accepted in the trade, because other local and  
2 national businesses selling similar products to the same market either use Real  
3 Ingredients in products that have the words “blueberry” or “maple” in their name, or  
4 refrain from using the words “blueberry” or “maple” in the names of products that lack  
5 Real Ingredients.

6 72. The Blueberry Donuts and Maple Donuts, at all times relevant herein, were of  
7 poor or below average quality within the description of a blueberry donut and a maple  
8 donut provided by Dunkin Donuts.

9 73. Blueberry Donuts and Maple Donuts, at all times relevant herein, did not and  
10 do not have the quality that a buyer would reasonably expect.

11 74. As a direct and proximate result of the foregoing, Plaintiff and all the other  
12 Putative Class Members sustained loss and damage and did not receive the benefit of  
13 their bargain.

14  
15 **THIRD CAUSE OF ACTION**  
16 **BREACH OF CONTRACT**  
*(National Class)*

17 75. Plaintiff re-alleges and incorporates by reference as fully set forth herein all  
18 paragraphs of Class Action Complaint.

19 76. Plaintiff brings this cause of action on behalf of himself and on behalf of  
20 National Class, including all classes.

21 77. Plaintiff and putative class members entered into valid contracts and paid  
22 sufficient consideration to purchase Blueberry Donuts and Maple Donuts from  
23 Defendants.

24 78. Defendants materially breached the contract for sale of Blueberry Donuts and  
25 Maple Donuts by failing to deliver actual blueberry donuts and/or maple donuts.

26 79. As a direct and proximate result of the foregoing, Plaintiff and all the other  
27 putative class members sustained loss and damage and did not receive the benefit of  
28 their bargain.

**FOURTH CAUSE OF ACTION**

**COMMON LAW FRAUD**

*(National Class)*

80. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of Class Action Complaint.

81. Plaintiff brings this cause of action on behalf of himself and on behalf of National Class, including all classes.

82. Defendants represented that they were selling blueberry donuts and maple donuts to Plaintiff and putative class members.

83. Defendants knew that the Class Products were not blueberry donuts and maple donuts as they did not contain the Real Ingredients.

84. Defendants made the representation that they were selling blueberry donuts and maple donuts to Plaintiff and putative class members with an intent to induce Plaintiff and putative class members to purchase the Class Products.

85. Defendants' representation was material, because it related to the contents of consumable goods and because reasonable consumers are likely to be influenced by the lack or presence of Real Ingredients in deciding whether to purchase these products.

86. Plaintiff and putative class members reasonably and justifiably relied on Defendants' representation that they were selling blueberry donuts and maple donuts.

87. In reliance on Defendants' representation that the Class Products were blueberry donuts and maple donuts, Plaintiff and putative class members purchased the Class Products.

88. As a direct and proximate result of the foregoing, Plaintiff and putative class members were damaged because they would not have purchased the Class Products had they known that those were not blueberry donuts and maple donuts and did not contain the Real Ingredients.

**FIFTH CAUSE OF ACTION**  
**INTENTIONAL MISREPRESENTATION**  
*(National Class)*

89. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of Class Action Complaint.

90. Plaintiff brings this cause of action on behalf of himself and on behalf of National Class, including all subclasses.

91. Defendants intentionally represented that they were selling blueberry donuts and maple donuts to Plaintiff and putative class members.

92. Defendants knew that the Class Products were not blueberry donuts and maple donuts as they did not contain the Real Ingredients.

93. Defendants made the representation that they were selling blueberry donuts and maple donuts to Plaintiff and putative class members with an intent to induce Plaintiff and putative class members to purchase the Class Products.

94. Defendants' representation was material, because it related to the contents of consumable goods and because reasonable consumers are likely to be influenced by the lack or presence of Real Ingredients in deciding whether to purchase these products.

95. Plaintiff and putative class members reasonably and justifiably relied on Defendants' representation that they were selling blueberry donuts and maple donuts.

96. In reliance on Defendants' representation that the Class Products were blueberry donuts and maple donuts, Plaintiff and putative class members purchased the Class Products.

97. As a direct and proximate result of the foregoing, Plaintiff and putative class members were damaged because they would not have purchased the Class Products had they known that those were not blueberry donuts and maple donuts and did not contain the Real Ingredients.



**SIXTH CAUSE OF ACTION**  
**NEGLIGENT MISREPRESENTATION**  
*(National Class)*

98. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of Class Action Complaint.

99. Plaintiff brings this cause of action on behalf of himself and on behalf of National Class, including all subclasses.

100. Defendants represented that they were selling blueberry donuts and maple donuts to Plaintiff and putative class members.

101. Defendants had no reasonable grounds to believe that the Class Products were blueberry donuts and maple donuts, because they did not contain the Real Ingredients.

102. Defendants intended for Plaintiff and putative class members to rely on their representations about their products.

103. Defendants' representation was material, because it related to the contents of consumable goods and because reasonable consumers are likely to be influenced by the lack or presence of Real Ingredients in deciding whether to purchase these products.

104. Plaintiff and putative class members reasonably and justifiably relied on Defendants' representation that they were selling blueberry donuts and maple donuts.

105. In reliance on Defendants' representation that the Class Products were blueberry donuts and maple donuts, Plaintiff and putative class members purchased the Class Products.

106. As a direct and proximate result of the foregoing, Plaintiff and putative class members were damaged because they would not have purchased the Class Products had they known that those were not blueberry donuts and maple donuts and did not contain the Real Ingredients.

**SEVENTH CAUSE OF ACTION**

**VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT CIVIL CODE § 1750 *ET SEQ.***

***(California Consumer Subclass)***

107. Plaintiff re-alleges and incorporate by reference as fully set forth herein all paragraphs of Class Action Complaint.

108. Plaintiff brings this cause of action on behalf of himself and on behalf of the California Consumer Class.

109. The Blueberry Donuts and Maple Donuts are “goods” within the meaning of Civil Code § 1761(a).

110. Defendants are “persons” as defined by Civil Code § 1761(c).

111. Plaintiff and each member of the Class are “consumers” within the meaning of Civil Code § 1761(d).

112. The Consumer Legal Remedies Act (“CLRA”), California Civil Code § 1750 *et seq.* applies to Defendants’ actions and conduct described herein because it extends to transactions that are intended to result, or which have resulted, in the sale of goods or services to consumers.

113. At all times relevant herein, Dunkin Donuts knowingly used the words “blueberry” and “maple” in the names of Blueberry Donuts and Maple Donuts with an intent to misrepresent the lack of such Real Ingredients in Blueberry Donuts and Maple Donuts.

114. The representations that Class Products were blueberry donuts and maple donuts were material, because they related to the contents of consumable goods and because reasonable consumers are likely to be influenced by the lack or presence of Real Ingredients in deciding whether to purchase these products.

115. At all times relevant herein, Dunkin Donuts provided said representation to the entire class by using the words “blueberry” and “maple” in the names of the Blueberry Donuts and Maple Donuts, and displayed them on the signs in product displays, in menus, on in-store banners, screens, advertisements, and elsewhere.

116. As alleged herein, Dunkin Donuts knew that said representation was false.

117. Plaintiff and the Class Members who purchased Class Products in reliance on Defendant's representation were harmed, because they would not have purchased the Blueberry Donuts and Maple Donuts had they known that the Blueberry Donuts and Maple Donuts did not contain the Real Ingredients.

118. Defendants have violated the CLRA in at least the following respects:

a. In violation of Civil Code § 1770(a)(5), Defendants have represented that the Blueberry Donuts and Maple Donuts have characteristics and benefits that they do not have;

b. In violation of Civil Code § 1770(a)(7), Defendants have represented that the Blueberry Donuts and Maple Donuts are of a particular standard, quality, or grade when they are not;

c. In violation of Civil Code § 1770(a)(9), Defendants have advertised the Blueberry Donuts and Maple Donuts without an intent to sell them as advertised; and

d. In violation of Civil Code § 1770(a)(18), Defendants have represented that the Blueberry Donuts and Maple Donuts were supplied in accordance with previous representations when they were not.

119. Defendants' deceptive acts alleged herein occurred in the course of selling a consumer product and Defendants have done so continuously through the filing of this Complaint.

120. As a direct and proximate result of Defendants' violation of Civil Code § 1770 *et seq.*, Plaintiff and other Class members have suffered irreparable harm and monetary losses entitling them to both injunctive relief and restitution. Plaintiff, on behalf of himself and on behalf of the Class, seeks damages and all other relief allowable under the CLRA.

121. Defendants' wrongful conduct, as set forth above, was willful, oppressive, and malicious.

122. Pursuant to Civil Code § 1782, Plaintiff provided notice to Defendants at least thirty days prior to filing this action for damages.

123. Defendants failed to make the showing required by Civil Code § 1782(c).

124. As a result, Plaintiff seeks actual damages for violation of the CLRA. In addition, pursuant to Civil Code § 1782(a)(2), Plaintiff and members of the class are entitled to an order enjoining the above-described wrongful acts and practices of Defendants, providing restitution to Plaintiff and the Class, ordering payment of costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court under Civil Code § 1780.

### **EIGHTH CAUSE OF ACTION**

#### **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.* (California Subclass)**

125. Plaintiff re-alleges and incorporate by reference as fully set forth herein all paragraphs of Class Action Complaint.

126. Plaintiff brings this claim on behalf of himself, California Class, and the general public in his representative capacity as a private attorney general against all Defendants for their unlawful, unfair, fraudulent, untrue and/or deceptive business acts and/or practices pursuant to California Business and Professions Code § 17200 *et seq.* ("UCL"), which prohibits all unlawful, unfair and/or fraudulent business acts and/or practices.

127. Plaintiff asserts these claims as he is a representative of an aggrieved group and as a private attorney general on behalf of the general public and other persons who have expended funds that the Defendants should be required to pay or reimburse under the restitutionary remedy provided by California Business and Professions Code § 17200 *et seq.*

128. Plaintiff has standing to bring this claim on behalf of himself and others similarly situated pursuant to California Business and Professions Code § 17200 *et seq.*, because Plaintiff suffered injury-in-fact, *inter alia*, because he would not have purchased the Blueberry Donuts and Maple Donuts had he known that the Blueberry Donuts and

1 Maple Donuts did not contain Real Ingredients, or he would have paid less for them.

2 129. Dunkin Donuts had exclusive knowledge of the fact that Blueberry Donuts  
3 and Maple Donuts did not contain Real Ingredients.

4 130. The lack of Real Ingredients in Blueberry Donuts and Maple Donuts is  
5 material as alleged herein.

6 131. Dunkin Donuts had a duty to disclose the lack of Real Ingredients in  
7 Blueberry Donuts and Maple Donuts as alleged herein.

8 132. Dunkin Donuts did not disclose the lack of Real Ingredients in Blueberry  
9 Donuts and Maple Donuts as alleged herein.

10 133. Dunkin Donuts actively concealed the lack of Real Ingredients from Plaintiff  
11 and the Putative Class Members.

12 134. Dunkin Donuts intended to deceive Plaintiff and Class Members by  
13 concealing the lack of Real Ingredients, motivated by market share and profit margin.

14 135. At all relevant times herein, Dunkin Donuts affirmatively used the words  
15 “blueberry” and “maple” in the names of Blueberry Donuts and Maple Donuts, and  
16 intentionally used substitute ingredients to create flavors similar to Real Ingredients,  
17 knowingly misrepresenting that the Blueberry Donuts and Maple Donuts contained Real  
18 Ingredients. Based on information and belief, the Real Ingredients are more expensive  
19 than the artificial ingredients that Dunkin Donuts used to deceive the consumers.

20 136. At all times relevant herein, Dunkin Donuts displayed the names of Blueberry  
21 Donuts and Maple Donuts on the signs in product displays, in menus, on in-store  
22 banners, screens, advertisements, and elsewhere.

23 137. Ordinary consumers would not have recognized the fact that the Blueberry  
24 Donuts and Maple Donuts lacked Real Ingredients, because of the deceptive naming of  
25 Blueberry Donuts and Maple Donuts and the flavors similar to Real Ingredients.  
26 Thereby, consumers were likely to be deceived.

27 138. Plaintiff and Class Members relied on Dunkin Donuts’ nondisclosure and  
28 affirmative misrepresentations and purchased the Blueberry Donuts and Maple Donuts

1 and were damaged as alleged herein.

2 139. Dunkin Donuts' conduct, as fully described herein, constitutes acts of untrue  
3 and misleading advertising and is, by definition, violation of California Business and  
4 Professions Code § 17200 *et seq.* Such conduct offends the established public policy of  
5 the State of California and is immoral, unethical, oppressive, unscrupulous and  
6 substantially injurious.

7 140. These advertisements, due to the national scope and extent of Defendants  
8 multi-media campaign, were uniformly made to all members of the class. Class  
9 members' acts of purchasing the Blueberry Donuts and Maple Donuts were consistent  
10 with basing such decisions upon such advertisements, and thus formed part of the basis  
11 for the transaction at issue, or the benefit of the bargain, which was material; had  
12 Plaintiff and the putative class known differently as to the lack of Real Ingredients in  
13 Blueberry Donuts and Maple Donuts they would not have purchased the Blueberry  
14 Donuts and Maple Donuts.

15 141. Dunkin Donuts' misconduct as alleged in this action constitutes negligence  
16 and other tortious conduct and this misconduct gave these Defendants an unfair  
17 competitive advantage over their competitors who do either use the more expensive real  
18 ingredients or do not use deceptive names for their similar products.

19 142. On the basis of balancing the welfare of the community and public interest,  
20 the utility to Dunkin Donuts is *de minimis*, so that the conduct of Dunkin Donuts is  
21 morally reprehensible, unethical and unscrupulous. Dunkin Donuts' practice is offensive  
22 to public policy and is immoral, unethical, oppressive, unscrupulous, and substantially  
23 injurious to consumers.

24 143. The acts, omissions, misrepresentations, practices and non-disclosures of  
25 Defendants as alleged herein constitute unlawful, unfair and/or fraudulent business acts  
26 and/or practices within the meaning of California Business and Professions Code §  
27 17200 *et seq.*

28 144. The acts, omissions, misrepresentations, practices, non-disclosures and/or



1 concealments of material facts, and/or deception alleged in the preceding paragraphs  
 2 occurred in connection with Defendants' conduct of trade and commerce in the United  
 3 States and in California.

4 145. The unlawful, unfair, deceptive and/or fraudulent business practices and/or  
 5 false and misleading advertising of Dunkin Donuts, as fully described herein, present a  
 6 continuing injury to Plaintiff and putative class members as alleged herein.

7 146. As a direct and proximate result of the aforementioned acts, Defendants, and  
 8 each of them, received monies expended by Plaintiff and others similarly situated who  
 9 purchased the Blueberry Donuts and Maple Donuts.

10 147. Pursuant to California Business and Professions Code § 17203 of the UCL,  
 11 Plaintiff seek an order of this Court enjoining Dunkin Donuts from continuing to engage  
 12 in unlawful, unfair or fraudulent business practices, and any other act prohibited by the  
 13 UCL.

14 148. In addition to the relief requested in the Prayer below, Plaintiff seek the  
 15 imposition of a constructive trust over, and restitution of, the monies collected and  
 16 profits realized by Defendants.

### 17 **NINTH CAUSE OF ACTION**

18 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW ("FAL"), CALIFORNIA BUSINESS**  
 19 **& PROFESSIONS CODE §§ 17500 ET SEQ.**  
 20 *(California Subclass)*

21 149. Plaintiff re-alleges and incorporates by reference as fully set forth herein all  
 22 paragraphs of Class Action Complaint.

23 150. Plaintiff brings this claim on behalf of himself, California Class, and the  
 24 general public in his representative capacity as a private attorney general against all  
 25 Defendants for their unlawful, unfair, fraudulent, untrue and/or deceptive business acts  
 26 and/or practices pursuant to California Business and Professions Code § 17500 *et seq.*  
 27 ("FAL"), which prohibits all unlawful, unfair and/or fraudulent business acts and/or  
 28 practices.

151. FAL makes it unlawful for any person, firm, corporation or association, or any employee thereof, with intent directly or indirectly to dispose of personal property to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any advertising device, or by public outcry or proclamation, or in any other manner or means whatever any statement, concerning that real or personal property which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

152. Defendants are persons, firms, corporations or associations, or employees of thereof.

153. The Class Products are personal property.

154. Defendants made statements to the public, including Plaintiff and putative class members, concerning the Class Products, stating that Class Products were blueberry donuts and maple donuts, with an intent to dispose of the Class Products.

155. The statement that the Class Products were blueberry donuts and maple donuts was untrue or misleading.

156. The statement that the Class Products were blueberry donuts and maple donuts was known by Defendants to be untrue, or by the exercise of reasonable care should have been known to be untrue or misleading.

157. Defendant, thus, violated and continues to violate FAL, has, and continues to obtain money from Plaintiff and putative class members.

158. Plaintiff requests restitution of the moneys paid by him and putative class members, disgorgement of profits made by Defendants as a result of the foregoing.

## TENTH CAUSE OF ACTION

### QUASI CONTRACT/RESTITUTION/UNJUST ENRICHMENT

*(National Class)*

159. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of Class Action Complaint.

1        160. Plaintiff brings this cause of action on behalf of himself and on behalf of  
2 National Class, including all classes.

3        161. Defendants intentionally and recklessly made misrepresentations and  
4 concealed facts about the Class Products to Plaintiff and the putative class members with  
5 an intent to induce them to purchase Class Products.

6        162. In reliance on Defendants' misrepresentations and concealment, Plaintiff and  
7 the putative class members, believed that the Blueberry Donuts and the Maple Donuts  
8 contained Real Ingredients.

9        163. Plaintiff and the putative class members made monetary payments to  
10 Defendant Dunkin Donuts to purchase the Class Products, directly or through an  
11 authorized store.

12        164. Defendants were unjustly enriched by any payments Plaintiff and the putative  
13 class members made to Defendants, directly or indirectly, that resulted from the  
14 misrepresentations and concealment.

15        165. Therefore, Plaintiff and the putative class members are entitled to restitution  
16 based on the quasi contract between Plaintiff and the putative class members and  
17 Defendants, and each of them.

## 18 19 PRAYER

20        WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated,  
21 and also on behalf of the general public, pray for judgment against all Defendants as  
22 follows:

- 23        A. An order certifying the Class, sub-classes and appointing Plaintiff and their  
24        counsel to represent the Class and sub-Classes;
- 25        B. For actual damages, if adequate;
- 26        C. For any additional and consequential damages suffered by Plaintiff and the  
27        Class;
- 28        D. For statutory damages in an amount of not less than \$1,000 per Plaintiff or  
Class member pursuant to California Civil Code § 1780(a)(1);

- 1 E. For restitution, as appropriate;
- 2 F. For statutory pre-judgment interest;
- 3 G. For reasonable attorneys' fees and the costs of this action;
- 4 H. For an order enjoining Defendant from selling Blueberry Donuts and Maple
- 5 Donuts;
- 6 I. For an order enjoining Defendant from using the words "blueberry" and
- 7 "maple" in the names of Blueberry Donuts and Maple Donuts.
- 8 J. For declaratory and/or equitable relief under the causes of action stated herein;
- 9 and
- 10 K. For such other relief as this Court may deem just and proper.

### 11 **DEMAND FOR JURY TRIAL**

12 Plaintiff demand a trial by jury for themselves and the Class on all claims so  
13 triable.

14 Dated: July 3, 2017.

15 THE MARGARIAN LAW FIRM  
16 801 North Brand Boulevard, Suite 210  
17 Glendale, California 91203

18  
19 By: /s/ Hovanes Margarian

20 Hovanes Margarian, Esq.

21 Attorney for Plaintiff,

22 Hrach Babaian and all others similarly situated.  
23  
24  
25  
26  
27  
28

**DECLARATION OF HRACH BABAIAN**

**PURSUANT TO CIVIL CODE § 1780(c)**

I, Hrach Babaian, declare as follows:

1. I am the Plaintiff in this action. I have personal knowledge of the matters set forth below and if called upon as a witness could and would competently testify thereto.

2. I am informed and believe that venue is proper in this court pursuant to Civil Code § 1780(c) based on the foregoing:

a. Defendant DUNKIN' BRANDS GROUP, INC. is doing business in Los Angeles County, CA and within the Central Judicial District of California.

b. The transaction complained herein occurred in Los Angeles County, CA and within the Central Judicial District of California.

WHEREFORE, I declare under the penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct, and that this Declaration was executed July 1, 2017 in Glendale, California.

  
\_\_\_\_\_  
Hrach Babaian